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DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. APHIS-2014-0002]

RIN 0579-AD98

Importation of Kiwi from Chile into the United States

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the fruits and vegetables regulations to list kiwi (Actinidia deliciosa and Actinidia chinensis) from Chile as eligible for importation into the United States subject to a systems approach. Under this systems approach, the fruit will have to be grown in a place of production that is registered with the Government of Chile and certified as having a low prevalence of Brevipalpus chilensis. The fruit will have to undergo pre-harvest sampling at the registered production site. Following post-harvest processing, the fruit will have to be inspected in Chile at an approved inspection site. Each consignment of fruit will have to be accompanied by a phytosanitary certificate with an additional declaration stating that the fruit had been found free of Brevipalpus chilensis based on field and packinghouse inspections. This rule allows for

the safe importation of kiwi from Chile using mitigation measures other than fumigation with methyl bromide.

DATES: Effective [Insert date 30 days after date of publication in the Federal Register].

FOR FURTHER INFORMATION CONTACT: Ms. Claudia Ferguson, Senior Regulatory Policy Specialist, Regulatory Coordination and Compliance, PPQ, APHIS, 4700 River Road Unit 133, Riverdale, MD 20737-1236; (301) 851-2352.

SUPPLEMENTARY INFORMATION:

Background

Under the regulations in "Subpart-Fruits and Vegetables" (7 CFR 319.56-1 through 319.56-73, referred to below as the regulations), the Animal and Plant Health Inspection Service (APHIS) of the U.S. Department of Agriculture prohibits or restricts the importation of fruits and vegetables into the United States from certain parts of the world to prevent plant pests from being introduced into and spread within the United States.

On October 16, 2014, we published in the Federal Register (79 FR 62055-62058, Docket No. APHIS-2014-0002) a proposal¹ to amend the regulations by listing kiwi (*Actinidia deliciosa* and *Actinidia chinensis*) from Chile as eligible for importation into the United States under the same systems approach as baby kiwi from Chile, which are eligible for importation under the conditions in § 319.56-53. We also prepared a commodity import evaluation document (CIED) titled "Importation of Fresh Fruits of Kiwi (*Actinidia deliciosa* and *Actinidia chinensis*) from Chile into the United States." The CIED assesses the risks associated with the importation of kiwi from Chile into the United States under the listed phytosanitary measures.

¹ To view the proposed rule, supporting documents, and the comments we received, go to <http://www.regulations.gov/#!docketDetail;D=APHIS-2014-0002>.

We solicited comments concerning our proposal for 60 days ending December 15, 2014. We received seven comments by that date. They were from private citizens, a fruit exporter, an industry group, and representatives of State and foreign governments. Four of the comments were supportive. Three commenters expressed concerns regarding aspects of the proposed rule. Those concerns are discussed below.

In the proposed rule, we proposed that a random sample of kiwi would have to be washed using a flushing method, placed in a 20-mesh sieve on top of a 200-mesh sieve, sprinkled with a liquid soap and water solution, washed with water at high pressure, and washed with water at low pressure. The washing process would then have to be repeated immediately after the first washing. The contents of the 200-mesh sieve would then be placed on a petri dish and analyzed for the presence of live Brevipalpus chilensis mites. This mite sampling method is identical to the method currently in use for baby kiwi production areas in Chile and has been found to be successful in identifying production areas within Chile with high and low populations of mites.

One commenter stated that the washing process should be expanded to include all fruit in a shipment.

The washing process is used as a way to sample for the presence of B. chilensis in order to confirm the low prevalence of B. chilensis in certified production areas within Chile. It is not intended as a phytosanitary measure.

Two commenters recommended that 270 mesh be used in place of 200 mesh for sampling at the port of entry because they stated that 200 mesh may not be fine enough to detect immature stages of B. chilensis.

Fruit has been imported from Chile since 1997 using a systems approach based on sampling for mites using a 200 mesh screen. Any eggs or nymphs found using a finer mesh

sieve cannot be identified to species. This systems approach is based on low prevalence for adult mites, not pest freedom. If even one adult B. chilensis mite is found in a shipment, it is enough to disqualify a place of production from the export program. APHIS has successfully used this approach for 18 years for determining areas of low prevalence for a number of Chilean fruits.

Therefore, for the reasons given in the proposed rule and in this document, we are adopting the proposed rule as a final rule, without change.

Executive Order 12866 and Regulatory Flexibility Act

This final rule has been determined to be not significant for the purposes of Executive Order 12866 and, therefore, has not been reviewed by the Office of Management and Budget.

In accordance with the Regulatory Flexibility Act, we have analyzed the potential economic effects of this action on small entities. Production, consumption, and trade of kiwi by the United States have been expanding and are expected to continue to increase, as shown in table 1. Over the 5 years from 2008 through 2012, U.S. kiwi production and imports expanded by about 29 percent and 24 percent, respectively, and U.S. exports by 48 percent. U.S. consumption of kiwi grew by about 23 percent over this same period.

The United States is dependent on imports for the major share of its kiwi supply. In 2012, nearly four of every five kiwis consumed were imported. Chile is the principal foreign source, supplying one-half of the kiwis imported by the United States in 2012, up from approximately one-third of U.S. kiwi imports in 2008. Chile is expected to continue to dominate the supply of kiwi to the United States in the near term. Under this rule, Chile's kiwi exporters will have the option of using the systems approach rather than relying on fumigation with methyl bromide to meet import requirements.

Although the United States is a net importer of kiwi, the percentage increase in U.S. kiwi

exports between 2008 and 2012 was twice the percentage increase in U.S. kiwi imports; U.S. producers are actively expanding their sales to other countries. We also note that kiwi imports from Chile are largely counter-seasonal to kiwi sales by domestic producers. California produces 98 percent the kiwis grown in the United States, and the California season runs October through May.² Kiwi from Chile is predominantly imported during the spring and summer months. Ninety-four percent of Chilean kiwi imported in 2012 arrived between April and September.³

Table 1. U.S. kiwi production, imports, exports, and consumption, and kiwi imports from Chile, 2008 and 2012, metric tons

	2008	2012 ¹	Percentage increase over 5 years
U.S. Production	20,865	26,853	28.7%
U.S. Imports	50,322	62,372	23.9%
U.S. Exports	6,883	10,204	48.2%
U.S. Consumption ²	64,304	79,021	22.9%
U.S. Imports from Chile	17,248	31,668	83.6%
Chile's Share of Imports	34.3%	50.8%	
Imports from Chile as a Percentage of U.S. Consumption	26.8%	40.1%	

Sources: For U.S. production, the U.N. Food and Agriculture Organization; for U.S. imports and exports, the U.S. Census Bureau, as reported by Global Trade Information Services, Inc.

¹ U.S. kiwi production data for 2012 are the most recently reported.

² U.S. consumption calculated as production plus imports minus exports.

Although kiwi production in the United States is expanding, it remains a relatively small agricultural industry, with fewer than 300 growers whose farms average about 13 acres.

Nevertheless, it is a vibrant industry with an expanding export market. This fact, together with

² California Kiwifruit Commission, <http://www.kiwifruit.org/about/availability.aspx>.

³ Based on U.S. Census data, as reported by Global Trade Information Services, Inc.

the counter-seasonality of kiwi imports from Chile, suggests that the economic impact of the rule for U.S. small entities will be minor.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12988

This final rule allows kiwi to be imported into the United States from Chile. State and local laws and regulations regarding kiwi imported under this rule will be preempted while the fruit is in foreign commerce. Fresh fruits are generally imported for immediate distribution and sale to the consuming public, and remain in foreign commerce until sold to the ultimate consumer. The question of when foreign commerce ceases in other cases must be addressed on a case-by-case basis. No retroactive effect will be given to this rule, and this rule will not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This final rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1995 (44 U.S.C. 3501 et seq.).

Lists of Subjects in 7 CFR Part 319

Coffee, Cotton, Fruits, Imports, Logs, Nursery stock, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Rice, Vegetables.

Accordingly, we are amending 7 CFR part 319 as follows:

PART 319--FOREIGN QUARANTINE NOTICES

1. The authority citation for part 319 continues to read as follows:

Authority: 7 U.S.C. 450, 7701-7772, and 7781-7786; 21 U.S.C. 136 and 136a; 7 CFR 2.22, 2.80, and 371.3.

2. Section 319.56-53 is amended as follows:
- a. By revising the section heading;
 - b. By revising the introductory paragraph;
 - c. By redesignating paragraphs (a), (b), (c), (d), and (e) as paragraphs (b), (c), (d), (e), and (f), respectively, and adding a new paragraph (a);
 - d. By revising the first and second sentences after the heading of newly designated paragraph (b);
 - e. By revising the third sentence after the heading of newly designated paragraph (e), introductory text; and
 - f. By revising newly designated paragraph (f).

The revisions and addition read as follows:

§ 319.56-53 Fresh kiwi and baby kiwi from Chile.

Fresh kiwi (Actinidia deliciosa and Actinidia chinensis) may be imported into the United States from Chile, and fresh baby kiwi (Actinidia arguta) may be imported into the continental United States from Chile under the following conditions:

(a) The national plant protection organization (NPPO) of Chile must provide a workplan to APHIS that details the activities that the NPPO of Chile will, subject to APHIS' approval of the workplan, carry out to meet the requirements of this section.

(b) * * * The production site where the fruit is grown must be registered with the NPPO of Chile. Harvested kiwi and baby kiwi must be placed in field cartons or containers that are marked to show the official registration number of the production site. * * *

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(e) * * * Kiwi in any consignment may be shipped to the United States, and baby kiwi in any consignment may be shipped to the continental United States, under the conditions of this section only if the consignment passes inspection as follows:

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(f) Phytosanitary certificate. Each consignment of fresh kiwi and fresh baby kiwi must be accompanied by a phytosanitary certificate issued by the NPPO of Chile that contains an additional declaration stating that the fruit in the consignment was inspected and found free of Brevipalpus chilensis and was grown, packed, and shipped in accordance with the requirements of 7 CFR 319.56-53.

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Done in Washington, DC, this 11th day of September 2015.

Michael C. Gregoire,

Acting Administrator, Animal and Plant Health Inspection Service.

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